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EXAMINER
LINDINGER, MICHAEL L

ART UNIT	PAPER NUMBER
2841	

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/981,347	HERRON ET AL.	
	Examiner	Art Unit	
	Michael L. Lindinger	2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-57 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-4,6-8,13-21,23,25-27,29-36,38,39,43-47,49,51-53 and 55-57 is/are rejected.

7)☒ Claim(s) 5-7, 9-12, 22, 24, 28, 37, 40, 41, 48, 50, 54 is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1 and 32 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In Claim 1, line 2 and in Claim 32, line 3, the Applicant includes the term "pre-selected" audio content, which is found nowhere in the Disclosure either by reference or definition. There is not a discernable difference between a "pre-selected" and "selected" audio content. In both cases, at some point, a user must select an option, yet at the same time, before that time of selection, the user will have to provide inputs and choices to the audio content server in order to store the audio content the user wishes to play back. For this reason, the Examiner is treating the term "pre-selected" in definition and scope as the formerly included term "selected" for the entirety of the rejection, and since they equivalent, the term "selected" is kept consistent throughout the content of the rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, 14, 32-33, and 42 are rejected under 35 U.S.C. 102(b) as being unpatentable by Herold U.S. Patent No. 5,832,067. Herold teaches an audio playback system comprising an audio content server 24, said audio content server 24 includes audio content to be selected for playback, and a device 20 to call said audio content server to request and receive an audio playback of selected audio content at a scheduled time, wherein said device is a clock-radio device, wherein said device to include an audio output speaker, said audio content server to play said selected audio content over said audio output speaker 34, wherein the audio playback includes audio advertising information, wherein the system includes a transmitter for transmitting a request to the audio content server, as well as a receiver to receive an audio playback of selected audio content requested by transmitter unit, and an audio output speaker to output said audio playback of said selected audio content (Col. 3, lines 8+; Col. 4, lines 10+; FIG. 1).

Claim R jections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 4 and 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Herold U.S. Patent No. 5,832,067 in view of Mainker U.S. Patent No. 5,909,487. Herold teaches an audio playback system comprising an audio content server 24, said audio content server 24 includes audio content to be selected for playback, and a device 20 to call said audio content server to request and receive an audio playback of selected audio content at a scheduled time, wherein said device is a clock-radio device 42, wherein said device to include an audio output speaker 34, said audio content server to play said selected audio content over said audio output speaker (Col. 3, lines 8+; Col. 4, lines 10+; FIG. 1). Herold does not explicitly teach a device that is to provide authentication information prior to accessing said audio content server. Mainker teaches a telecommunications device comprising authentication information that the user must enter before permission is granted to access the dialing features of the telecommunications system (Col. 3, lines 35+; Col. 4, lines 1+; Col. 6, lines 35-50). It would have been obvious to a person skilled in the art at the time of the invention to adapt the device of the Herold reference to include an authentication feature before

accessing the audio content server. By including an authentication feature within the device, the security of the information provided on the audio content server may be better protected and safeguarded.

2. Claims 8, 13, 15-21, 23, 25-27, 29-31, 34-36, 39, 43-47, 49, 51-53, and 55-57 rejected under 35 U.S.C. 103(a) as being unpatentable over Herold U.S. Patent No. 5,832,067 in view of Mainker U.S. Patent No. 5,909,487 in further view of Smith Dewey 6,229,430 B1. Regarding Claims 8, 13, 15-17, 34-36, 39, and 43, Herold teaches an audio playback system comprising an audio content server 24, said audio content server 24 includes audio content to be selected for playback, and a device 20 to call said audio content server to request and receive an audio playback of selected audio content at a scheduled time, wherein said device is a clock-radio device 42, wherein said device to include an audio output speaker 34, said audio content server to play said selected audio content over said audio output speaker, wherein Herold teaches an settable alarm time, wherein one embodiment of the Herold invention comprises several servers 24, each capable of transmitting a single message and each having its own telephone number (Col. 3, lines 8+; Col. 4, lines 10+; FIG. 1). Herold does not explicitly teach an audio playback system comprising a microphone used to select audio content on said audio content server, a web based browser, wherein web based browser is used to access user configuration server to update subscriber information, a schedule data server used to provide scheduling information across said device. Mainker teaches not only a telecommunications device comprising authentication information that the

user must enter before permission is granted to access the dialing features of the telecommunications system, but the call back telecommunications apparatus provided in the invention can exist within a public land mobile network (PLMN) telecommunications exchange, such as a Mobile Switching Center (MSC), or a private branch exchange (PBX) (Col. 3, lines 35+; Col. 4, lines 1+; Col. 6, lines 35-50). Smith Dewey teaches a system and method for alerting a user using an interactive alarm clock comprising a web browser 118, a communication network 114, an interface 110 coupling to the communications network, and a resettable alarm 124 based on inputted data such as weather, traffic alerts acquired from the web browser and audible played back to the user (FIG. 1). It would have been obvious to a person skilled in the art at the time of the invention to not only adapt the Herold reference to include an authentication feature from the Mainker reference as highlighted in the above rejection, but to also include a web browser and interface network linking the audio playback device to the internet in order to better update the user, as well as to also recognize the established hierarchical configuration of media servers such as PBX and there relationship to networks such as the internet in providing information to subscribers.

Regarding Claims 18-21, 23, 25-27, and 29-31, the combination of the Herold, Mainker, and Smith Dewey teachings inherently possess the methods to select audio content from an audio server to be provided via an audio playback over an audio output speaker, scheduling a time to send a request to said audio content server, sending said request to receive said audio playback at said scheduled time, and playing the audio

playback of the selected audio content over said audio output speaker, as well as the corresponding mounting and assembling steps needed to construct the apparatus.

Regarding Claims 44-47, 49, 51-53, and 55-57, the combination of the Herold, Mainker, and Smith Dewey teachings inherently possess a machine readable medium 62, which when executed by a processor 54, cause said processor to perform the methods detailed in the above rejection (Herold, Col. 4, lines 10+).

Prior Art

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Rolf U.S. Patent No. 5,555,536 discloses a device for playing recorded audio at a selected time comprising a memory and playback unit.
- Chan U.S. Patent No. 5,786,768 discloses a clock radio gas detector apparatus and method comprising a radio, a speaker, and a speech synthesizer.
- Jeong U.S. Patent No. 5,802,158 discloses a method and apparatus for providing an alarm call to a remotely located user using a disa line in a private exhange.
- Jodoin U.S. Patent No. 5,812,653 discloses a subscription and paired authorization code based access to a meet-me conference service.
- Pattison U.S. Patent No. 5,991,373 discloses a reproduction of a voice and video session comprising a voice server and workstations.
- Nielson U.S. Patent No. 6,212,268 B1 discloses a pre-scheduled callback service comprising a callback service and a domestic telephone network.
- Smith Dewey U.S. Patent No. 6,229,430 B1 discloses a system and method for alerting a user comprising a communication network and memory components.
- Siemens U.S. Patent No. 6,373,374 B1 discloses a cordless phone system with speech recognition alarm comprising an Internet server and phone network.

- Gerszberg U.S. Patent No. 6,377,664 B2 discloses videophone multimedia announcement answering machine.
- Patterson U.S. Patent No. 6,504,913 B1 discloses a call handling mechanism.

Response to Arguments

1. Applicant's arguments filed June 28, 2003 have been fully considered but they are not persuasive. Regarding Claim 1, as stated above, the now amended Claim including the term "pre-selected" has been treated as the original Claim containing the term "selected." In both cases, audio content is being selected from a server to provide the user with predetermined information. Also, nowhere in the Claim is there any mention of providing for a remote selecting limitation to select audio content from a remote location. For the foregoing reasons, Claim 1 continues to be anticipated by the combination of the Herold reference. Accordingly, the Examiner's rejection over the Herold reference under 35 U.S.C. 103(b) is upheld.

Regarding Claims 2-3, 14, 32-33, and 42, the Applicant fails to specifically point out how the language of these Claims patentably differentiates themselves from the applied art and thus the rejection is repeated.

Regarding Claims 4 and 38, the Applicant fails to specifically point out how the language of these Claims patentably differentiates themselves from the Herold and Mainker combination and thus the rejection is repeated.

It is noted that in the following response to a piece of the argument, the Examiner notes that Applicant argues Prior Art does not teach a memory as claimed in Claim 16. It is assumed the Applicant mean to argue Claim 15 that claims a memory and not Claim 16. Regarding Claim 15, Herold teaches a microprocessor comprising a memory 272 that stores the device settings (Col. 6, lines 1+). For the foregoing reasons, Claim 16 continues to be anticipated by the combination of the Herold and Mainker references. Accordingly, the Examiner's rejection over the Herold and Mainker combination under 35 U.S.C. 103(a) is upheld.

Regarding Claims 16-17, the Applicant fails to specifically point out how the language of these Claims patentably differentiates themselves from the applied art and thus the rejection is repeated.

Regarding Claims 18, the Herold and Mainker reference teaches a method to select audio content as is stated in the above rejection. The method of accessing an audio content server is recognized as an equivalent to selecting an audio content from an audio content server. For the foregoing reasons, Claim 18 continues to be anticipated by the combination of the Herold and Mainker references. Accordingly, the Examiner's rejection over the Herold and Mainker combination under 35 U.S.C. 103(a) is upheld.

Regarding Claims 19-21, 23, 25-27, and 29-31, the Applicant fails to specifically point out how the language of these Claims patentably differentiates themselves from the applied art and thus the rejection is repeated.

Allowable Subject Matter

1. Claims 5-7, 9-12, 22, 24, 28, 37, 40, 41, 48, 50, 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael L. Lindinger whose telephone number is (703) 305-0618. The examiner can normally be reached on Monday-Thursday (7:30-6).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (703) 308-3121. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7318 for regular communications and (703) 746-7318 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Michael L. Lindinger
Patent Examiner
Art Unit 2841

MLL
August 22, 2003

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